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SENSITIVE
SIPDIS

STATE FOR EEB JOELLEN URBAN AND TIM MCGOWAN

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SUBJECT: BOSNIA: POST RESPONSE 2009 SPECIAL 301 REVIEW
REF: SECSTATE 8410

1. (SBU) Summary: Intellectual property rights (IPR) in Bosnia and Herzegovina (BiH) are not adequately protected. The Government suffers from a low level of capacity, primarily technical expertise in policy and law enforcement institutions. While legislation to enforce IPR is in place, enforcement is lax. In recent years actions by the Federation and Republika Srpska entity-level Governments to legalize their own use of Microsoft software were significant steps forward in their commitment to IPR protection. Also, the State-level (national) Government finally signed the Strategic Partnership Agreement between Microsoft Corporation and Bosnia and Herzeovina in December 2008 ending the State-level government,s use of pirated Microsoft software in te State-level government,s institutions and agencis and providing a significant symbolic precedent In 2006, the International Intellectual Property Alliance made special mention of BiH because of its lack of effective enforcement. Since then, there has been no deterioration in the situation, and modest progress has been made in building institutional capacity. Meeting European Union IPR requirements following the signing of a Stabilization and Association Agreement with the European Union in 2008 and continued negotiations toward World Trade Organization (WTO) accession will necessitate further improvement in the IPR situation. Therefore Post does not recommend that BiH be included in the Special 301 Watch Lists at this point. (Note: Post has not found any private submissions relating to Bosnia on the United States Trade Representative website per Reftel. This is a voluntary submission. End Note.) End Summary.

BOSNIA'S IP CLIMATE

2. (SBU) The protection of IPR in BiH is poor. The country suffers from a lack of institutional capacity that is unfortunately typical of many areas of Government activity. BiH is still in the process of setting up national institutions to replace (or simply coordinate) the work of the sub-national "entity" governments (the Federation and Republika Srpska) that were the result of the Dayton Peace Agreement. Jurisdiction for enforcement overlaps between the nationwide "State-level" government and the sub-state "entity" governments of the Federation (including Canton-level and municipal governments) and the Republika Srpska, as well as Brcko District. In the area of IPR protection, this challenge is compounded by a lack of proper enforcement history and cultural awareness of the topic.

3. (SBU) BiH is currently at the stage in IPR protection where it has a fairly complete legal framework and

participation in international agreements, but has a policy institution that is in its infancy, and a fledgling enforcement structure. BiH's institution for IPR policy is the national-level (known as "State-level⁸) Intellectual Property Rights Institute (IPRI). While the legislation that created the IPRI was passed in 2004, slow progress has been made to date in terms of the Institute's capacity to achieve effective protection of intellectual property rights. The IPRI has 40 employees out of a planned total of 64 (up from 13 in 2006), although in August 2007 it moved into a permanent location in the city of Mostar. We judge the leadership of the IPRI to be dedicated and well-intentioned, but the institution is hampered by this lack of capacity both inside the organization and in the country at large. More specifically, the IPRI has had difficulty finding personnel with the necessary legal expertise. As noted, the IPRI's staffing levels have improved over the past year and should continue to improve in the near future, but it is unlikely that many new staff will have prior expertise. As a result, the organization's competency will take time to develop. The Embassy has actively worked to build institutional capacity by sending IPRI management and staffers to U.S. Patent and Trademark Office (USPTO) trainings. Additionally, the European Union IPR project has also provided training and is drafting legislation that would allow Bosnia to meet European Union and WTO IPR requirements.

14. (U) In the business environment in general there is a low level of awareness of copyright issues and requirements. Curbing business software piracy could significantly improve the local economy, create new jobs and generate significant additional tax revenue. As a result, software producers and official distributors are less competitive in an environment that makes the establishment of a legitimate market difficult. According to the Business Software Alliance (BSA), the rate of illegal software installed on personal computers in Bosnia last year has dropped by another one percent from the year before and currently stands at 68 percent, which is about average for the region. Bosnia has a slightly lower piracy rate than Macedonia, Montenegro, Albania, Bulgaria and Romania. The latest study on the economic consequences of software piracy indicates that a reduction in software piracy by ten percent would increase annual revenues in BiH in the IT field by an additional 97 million USD by 2009, annual tax revenues by a further 14 million USD, and would open 1400 new jobs in the IT sector. The BSA has commenced an enforcement program that seeks to ensure that computer resellers and businesses use licensed software and has provided training to police investigators. A significant test enforcement case involving a State-level agency's purchase of computers with pirated software from a vendor who falsified Microsoft licenses is underway and moving through the court system.

15. (U) Pirated music and videos are widely present and openly bought and sold in public markets. During 2008, Bosnian law enforcement agencies reported a combined total over 80,000 pirated discs (DVDs and CDs) were seized in several police actions throughout the country. However, these activities were rather sporadic, rather than part of a comprehensive anti-piracy strategy.

NOTORIOUS MARKETS

16. (U) Several years ago, a notorious market in Sarajevo known as "CD Alley⁸ was dismantled by local authorities. Since then, pirate CD and DVD distribution has been more geographically dissipated, and appears smaller-scale (although it is difficult to judge volumes being sold by smaller vendors). We are not aware of any online "virtual markets⁸ hosted in Bosnia. Post was notified by some U.S. companies reporting that certain open-air markets have been identified as major destination markets throughout the country (Arizona Market in Brcko District, Stup Market and Skenderija boutiques in Sarajevo, and others) with a significant number of distributors and sellers of counterfeit products.

OPTICAL MEDIA PIRACY

¶17. (U) Pirated copies of optical media are widely present. It is often unclear to the average consumer where to buy licensed material, as even otherwise-legitimate stores have been known to sell pirated media. There are no laws in BiH that regulate the manufacture of optical media.

USE/PROCUREMENT OF GOVERNMENT SOFTWARE

¶18. (SBU) During 2006 Microsoft and Oracle successfully reached a legalization agreement with both entity governments, as well as with one of BiH's electric utilities, which is one of the largest government-owned businesses in the country. After years of effort on the part of Microsoft and U.S. Embassy Sarajevo, the Council of Ministers of Bosnia and Herzegovina finally approved the signing of the Strategic Partnership Agreement between Microsoft Corporation and Bosnia and Herzegovina in December 2008. This agreement will end the State-level government's use of pirated Microsoft software and should serve as a major step for Intellectual Property Rights (IPR) enforcement in Bosnia and Herzegovina. These successes were a significant symbolic step forward in terms of the Government serving as an example for copyright protection. Recently, Oracle has also requested Embassy support in encouraging another State-level agency - the ITA (Indirect Taxation Authority) - to start negotiations with Oracle on licensing the Oracle database software that the ITA has been using without a proper licensing agreement since the ITA's inception.

TRIPS COMPLIANCE, FTA, AND OTHER IP ISSUES

¶19. (SBU) BiH is not a member of the WTO, although the country has entered negotiations for WTO accession. The Director of the IPR Institute says that not all BiH legislation is completely harmonized with TRIPS requirements. However, the European IPR project draft legislation is intended to comply with TRIPS. Additionally, Bosnia passed a new and comprehensive law on pharmaceuticals in 2008 that will (when fully implemented) enable Bosnia to meet TRIPS requirements for pharmaceuticals.

DATA PROTECTION

¶10. (SBU) Post has been in recent contact with all US pharmaceutical companies currently operating in Bosnia; none reported patent infringement cases involving pharmaceutical products.

PRODUCTION, IMPORT AND EXPORT OF COUNTERFEIT GOODS

¶11. (SBU) In early 2008, a U.S.-based sporting goods manufacturer reported that certain importers distributed counterfeit products produced by importing generic products (sneakers, bags, caps, etc.) without the company logo, and applying the logo and company name on the products thereafter.

ENFORCEMENT

¶12. (U) BiH does not have a coordinated regime of IPR enforcement. The previously separate RS and Federation customs services in 2006 were merged into a new State-level agency, the Indirect Taxation Administration (ITA). The IPRI

is working with the ITA to develop customs procedures for the identification and handling of counterfeit goods. According to a report issued by the Indirect Taxation Administration (ITA), during 2007 the Customs officials seized over 170,000 counterfeit products that included logo emblems of NIKE, Adidas, Puma and Diesel (mostly clothing and footwear). Also, the State Agency for Investigations and Protection (SIPA) accused 15 persons of illegal imports and distribution of counterfeit products.

¶13. (U) Some government agencies described above are well-intentioned but hampered by a lack of capacity; others face accusations that they have the capacity to act but are not making a determined effort to enforce IPR. . SIPA has, however, increased its interest in IPR cases and has established an IPR group among its investigators.

TREATIES

¶14. (SBU) BiH has not ratified the 1996 WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). However, the IPRI plans to include the preparation of its proposal to the Government for accession to these treaties in its 2008 work plan. BiH is a member and signatory of 12 different IP-related treaties.

INTERNET PIRACY

¶15. (U) Post is unaware of any actions by BiH to combat internet piracy.

TRAINING

¶16. (SBU) The most significant need for training on IPR issues is for law enforcement. Prosecutors typically do not have experts in any of the police forces who can verify that materials seized are actually counterfeit -- and subsequently testify accordingly at trial. (Note: This expertise is instead provided largely by the organization Sina Qua Non.) As a result, additional training for police and customs agents on the identification of counterfeit material would be helpful. Legal training on IPR concepts for prosecutors and judges would also help to increase institutional capacity. In coordination with USPTO, Embassy Sarajevo and the United States Department of Justice are planning a regional IPR conference for police and prosecutors to be held in Sarajevo on May 20-22, 2009. The conference will focus on investigating and prosecuting IP crime with real-life examples and providing real life solutions to the participants. Also, in cooperation with the Sarajevo Film Festival, the Embassy organized an Intellectual Property Rights Roundtable on August 18, 2008. This invitation-only session was led by renowned U.S. IPR legal expert Mr. Joseph Beck as well as key Bosnian and regional stakeholders from the film and other industries harmed by pirated and counterfeit goods. The audience included high-ranking representatives from several levels of law enforcement institutions of Bosnia and Herzegovina. The aim of the Roundtable was to address the IPR issue in general with the special focus on the movie industry and to raise awareness among the key stakeholders. The event was a major public relations success and was widely covered by Bosnian TV and print media. Embassy Sarajevo is also working with the U.S. Department of Commerce Commercial Law Development Program to develop a training session for judges in the fall of 2009.

¶17. (U) Training for the incoming staff of the IPRI that supplements the training provided by the European Union IPR project would also be a well-targeted means of building local institutional capacity. As mentioned above, the IPRI has hired and will soon hire many new staffers who have no prior expertise. The IPRI Director has expressed a desire to

receive training on IPR policy for this new staff, particularly for copyrights, trademarks, patents, and industrial design. In January 2008, Post nominated a local employee from the IPRI who attended and completed the USPTO GIPA Patent Program: Basic Principles at the USPTO Headquarters in Alexandria, Virginia./

CONCLUSION

¶19. (SBU) BiH still does not have adequate IPR protection. The decisions of the entity governments and the State-level Government to legalize and license their own use of Microsoft software were significant steps forward in the Government's commitment to IPR protection. These successes are a significant step forward in terms of the government serving as an example for copyright protection to the private sector. Limited progress has been made since then, and Microsoft, Oracle, Cisco, and other IT companies have expanded their local offices, which should help contribute to increased awareness of the requirements for legal software use. Increased staffing of the IPRI will help push forward the policy framework for IPR in BiH. Finally, in order to make progress toward the WTO and the European Union, the Government will have to make improvements in IPR protection over time. Given these positive indicators, and the relatively low level of monetary impact from local piracy (as estimated by the IIPA), Post does not recommend inclusion of BiH in the Special 301 Watch Lists.

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